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## MAGISTRI SCRINIORUM, ANTITPAΦΗΣ, AND PEΦEPENΔAPIOI

BY J. B. BURY

IN his well known and masterly study on the administration of the Ostrogothic kingdom in Italy, which appeared under the title *Ostgotische Studien* in the *Neues Archiv*, xiv (1888), Mommsen identifies the *referendarii* who meet us in documents of the fifth and sixth centuries A.D. with the officials who were called ἀντιγραφής, and both with the *magistri scriniorum*. He has overlooked the difficulties which lie in the way of this conclusion.

There seems to be clear proof that the *magistri sacrorum scriniorum* were known as οἱ ἀντιγραφής. But before bringing forward the evidence, it is necessary to say a word about the *sacra scrinia*. In the *Notitia Dignitatum* (*Or.* xi, 13–16, ed. Seeck) we find four *scrinia* "under the disposition," as the phrase was, of the Master of Offices. These are: *memoriae*, *epistularum*, *libellorum*, and *dispositionum*. We find these four often associated together in imperial laws as *sacra scrinia nostra*, or *scrinia palatii*.<sup>1</sup> But the *scrinium dispositionum* stands apart from the others; its functions were not homogeneous with them. Its principal business seems to have been to draw up the programme of the Emperor's daily work and make corresponding arrangements. The chief official in this bureau was the *comes dispositionum*, the chief officials in the three others were *proximi*.<sup>2</sup> The functions of the *scrinia memoriae*, *epistularum*, *libellorum* were closely related, and so we find them associated together as the three *scrinia*.<sup>3</sup> It is these alone which concern us. It was from these that the *quaestor* drew his assistants (*adiutores quos voluerit*).<sup>4</sup> In each of these *scrinia* there was (1) a

<sup>1</sup> See *C. I.* 12, 19, 1; 3; 4; 11; cf. *C. Th.* 6, 26.

<sup>2</sup> *C. I.* 12, 19, 8.

<sup>3</sup> *C. Th.* 6, 26, 17 in tribus s. *memoriae epistularum libellorumque* (cf. *ib.* 4; 17); *C. I.* 12, 19, 5; *ib.* 13 in s. *sacrae mem.* — in duobus reliquis s., id est *sacr. epp. sacrorumque libb.*; *ib.* 15; Nov. 27 (ed. Zach. = vulg. 35).

<sup>4</sup> Not. Dig., *Or.* xii, 6.

*proximus*, (2) a *melloproximus*, (3) *exceptores*, or shorthand writers, and (4) respectively *memoriales*, *epistulares*, and *libellenses*.<sup>1</sup>

While these bureaux were controlled by the Master of Offices, they supplied assistant officials not only to the quaestor, but to the dignitaries known as *magistri scriniorum*, who had the rank of *spectabiles*,<sup>2</sup> and whose functions were closely connected with those of the quaestor. The *magistri* appear as independent officials in the *Notitia Dignitatum*, subordinate only to the Emperor himself. There were four in number: *memoriae*, *epistularum*, *libellorum*, and *epistularum Graecarum*, and they were furnished with *adiutores electi* from the three *scrinia*.<sup>3</sup> It is obvious that the *scr. epp.* supplied both the *mag. epp.* and the *mag. epp. Graec.*; there was no special *scrinium* for *epistulae Graecae*. For an account of the functions of the *magistri* I may refer to Karlowa.<sup>4</sup> The *magister memoriae* drafted and issued imperial decisions (*adnotationes* made on the margins of documents), and answered *preces* (evidently in writing). The *magister epistularum* dealt with answers to legations of foreign powers and deputations from the provinces; he examined the questions (*consultationes*) addressed to the government by officials; and he also dealt with *preces* (probably such as were connected with his other duties). The *magister libellorum* dealt chiefly with *cognitiones* or appeal cases. Letters which had to be written in Greek or translated into Greek were the province of the *magister epistularum Graecarum*. It will be readily seen that the functions of the *mag. mem.* and *libb.* connected their work closely with that of the quaestor, while those of the *mag. epp.* brought him into contact with the quaestor so far as he dealt with *preces*, but otherwise associated him closely with the Master of Offices.

To prove that ἀντιγραφεύς<sup>5</sup> was used to designate a *magister scrinii*, Mommsen<sup>6</sup> adduces the following texts. (1) Suidas, s. v. Ἀδριανός: καὶ ἀντιγραφεύς τῶν ἐπιστολῶν ὑπὸ Κομμόδου ἐγένετο. Here the imperial

<sup>1</sup> For these officials, cf. *C. I.* 12, 19, 1; 5; 10. In the *s. mem.* there were also *laterculenses*, the officials who prepared the *minus laterculum*. *Ib.* 13; 15.

<sup>2</sup> Cf. *C. I.* 12, 9, 1: 1, 23, 7.

<sup>3</sup> *Not. Dig.*, *Or.* xix. The order in which the *magistri* are named in the *Not.* (and generally in the laws) is the order of precedence; cf. *C. I. L.* 6, 510.

<sup>4</sup> *Römische Rechtsgeschichte*, I (1885), 834 sq.

<sup>5</sup> Ioannes Lydus (iii, 27, p. 115, ed. Wünsch) says that ἀντιγραφεύς is Greek for the old *antecessor*.

<sup>6</sup> *Op. cit.*, 482.

*ab epistulis* is meant. But this text only illustrates, it does not strictly prove, the use of the Greek term for the later *mag. ep̄p.* (2) Peter the Patrician (fr. 14, in Müller, *F. H. G.* iv, 189) records that Diocletian and Galerius, meeting at Nisibis, sent Sicius Probus, ἀντιγραφέα τῆς μνήμης, as envoy to Persia. Probus was evidently the *magister memoriae* of one of the Emperors. (3) Philostorgios (xi, 2) designates the tyrant Eugenios as μάγιστρον τὴν ἀξίαν, while Theophanes (*A. M.* 5882, p. 71, ed. De Boor) describes him as ὁ ἀπὸ γραμματικῶν ἀντιγραφεὺς.

To these passages may be added in illustration: (4) John Malalas (494, ed. Bonn.) συγκαθημένων αὐτῷ (sc. τῷ ἐπάρχῳ τῆς πόλεως) καὶ συνεξαζόντων Κωνσταντίνου κοιαίστωρος καὶ Ἰουλιανοῦ ἀντιγραφέως, καὶ Ζηνοδόρου ἀσεκρήτης ἐκλαμβάνοντος<sup>1</sup> τὰς αὐτῶν ἀποκρίσεις. Here Julian, who assists the Prefect of the City and the Quaestor in a trial for high treason, is doubtless the *magister memoriae*. (5) Peter Patricius (fr. 46, *F. H. G.* iv, 248): Ἀστέριος εἰς τῶν βασιλείων διαιτητῶν οὓς δὴ ἀντιγραφεὺς ἀποκαλέσους. (6) In the *Ecloga* of Leo III and Constantine V (p. 2, ed. Monferratus) the ἀντιγραφῆς are closely associated with the quaestor: τόν τε ἐνδοξώτατον κοιαίστωρα καὶ τοὺς ἐνδοξωτάτους ὑπάτους καὶ ἀντιγραφεῖς (*sic*). (7) Probably in the eighth century and certainly in the ninth, the ἀντιγραφῆς are in the officium of the quaestor.<sup>2</sup>

From all this evidence it seems quite clear that ἀντιγραφῆς was used to designate the *magistri sacrorum scriniorum*.

*Referendarii* meet us in documents of the fifth century,<sup>3</sup> but it is only in texts of the sixth century that we find much about their functions. The following passages are the most important:

Procopius, *B. P.* 2, 23 (p. 256–7, ed. Haury): Θεόδωρον ἐκέλευε τοῦ ἔργου τούτου ἐπιμελεῖσθαι (sc. to see to the burying of those who died of the plague), ὃς δὴ ἀποκρίσει ταῖς βασιλικαῖς ἐφειστήκει, ἀεὶ τῷ βασιλεῖ τὰς τῶν ἱκετῶν δεήσεις ἀγγέλλων σημαίνων τε αὐθις ὅσα ἂν αὐτῷ βουλομένη εἴη. ῥεφερενδάριον τῇ Λατίνων φωνῇ τὴν τιμὴν ταύτην καλοῦσι Ῥωμαῖοι.

<sup>1</sup> ἐκλαμβάνειν = *exciḗpere*, take down in shorthand.

<sup>2</sup> Philotheos, *Kletorologion*, ap. Const. Porph., *De Cer.*, p. 718, ed. Bonn.

<sup>3</sup> One of the earliest mentions of a *ref.* is in the correspondence of S. Nilus (beginning of fifth century), who addresses letters Ὑακλίνθφ ραιφερενδάριφ, iii, 83, 84 in Migne, *P. G.* 79.

Procopius, *H. A.* 14 (p. 92, ed. Haury) : τοῖς δὲ ῥεφερενδαρίοις καλουμένοις οὐκέτι ἀπέχρη ἀνευγεῖν εἰς τὸν βασιλέα τὰς τῶν ἱκετευόντων δεήσεις, ἐς δὲ τὰς ἀρχὰς ἀναγγεῖλαι μόνον ἥπερ εἰώθει ὁ τι ἂν αὐτῷ ἀμφὶ τῷ ἱκέτῃ δοκῇ, ἀλλὰ ξυμφορήσαντες ἐκ πάντων ἀνθρώπων τὸν ἄδικον λόγον φενακισμοῖς μὲν τὸν Ἰουστινιανὸν καὶ παραγωγοῖς τισιν ἐξηπάτων.

C. I. 1, 15, 2, a law of Justin and Justinian (527 A.D.) : ὥσαύτως καὶ τὸν ἐνδοξότατον κοιαίστωρα τοῦ παλατίου καὶ τοὺς περιβλέπτους ῥεφερενδαρίους τῆς ἡμετέρας εὐσεβείας ὀρθῶς τὴν ἀγραφὸν ἡμῶν θεῖαν κέλευσιν τὴν γενομένην ἐπὶ τοῖς προσιούσιν καὶ δικαστὴν ἥτοι συνδικαστὴν αἰτοῦσιν ἢ ἄλλο τι τῶν εἰς δίκας τεινόντων διὰ καταθέσεως παρασκευάζειν γενέσθαι φανεράν· ἐπὶ τούτῳ γὰρ δὴ καὶ μόνῳ τὴν τῆς ἀγράφου κελεύσεως μνήμην γίνεσθαι συγχωροῦμεν.

Justinian, *Nov.* 153 (= vulg. 124), p. 291, ed. Zachariä : on the same subject (545 A.D.) : ἀλλὰ καὶ τοὺς περιβλέπτους ῥεφερενδαρίους τὰς ἡμετέρας κελεύσεις κατὰ τὸ προσήκον ποιεῖν φανεράς, τὸν αὐτὸν νόμον βεβαιοῦντες κελεύομεν τοὺς περιβλέπτους ῥεφερενδαρίους ἐπὶ ταῖς αἰτίαις αἷς διδάσκουσιν ἥτοι ἀναφέρουσι πρὸς τὴν ἡμετέραν γαληνότητα μηδεμίαν ἔχειν ἄδειαν, ἢ αὐτοὺς ἢ τοὺς αὐτῶν βοηθοὺς . . . κρατεῖν τινα κ.τ.λ.

Justinian, *Nov.* 134 (= vulg. 113), p. 176 sq., ed. Zach. : an ordinance forbidding interruptions or postponements in judicial trials on the pretext of imperial mandates delivered by *referendarii* (541 A.D.) : θεσπίζομεν ὥστε δίκης ἐξεταζομένης . . . παρὰ δικασταῖς, εἴτε ἐνταῦθα εἴτε ἐν ἐπαρχαίαις, μήτε πραγματικὸν τύπον μήτε ἑτέραν ἀντιγραφὴν μήτε θεῖαν ἡμῶν τινα ἔγγραφον ἢ ἀγραφὸν κέλευσιν ἢ κατάθεσιν ἐν ταύτῃ τῇ βασιλίδι πόλει παρὰ τῶν περιβλέπτων ἡμῶν ῥεφερενδαρίων ἢ ἑτέρου τινός, διατυποῦσαν αὐτοῖς ὅπως δέοι τὴν ἀρχθεῖσαν ἐξετάζειν ἢ κρίνειν ὑπόθεσιν καταφανῇ γίνεσθαι τοῖς δικάζουσιν ἢ καταφανῇ γενομένην κρατεῖν.

Cassiodorus, *Var.* vi, 17, p. 189, ed. Mommsen : *Formula referendariorum* : per eum nobis causarum ordines exponuntur, per eum interpellantium vota cognoscimus et ipsis responsa reddimus, ut negotia compedita solvamus. . . . sententiae vero nostrae tanta memoriae cautela tenendae sunt ut nihil minus nihil additum esse videatur, etc.

Cassiodorus, *Var.* v, 41, p. 167, ed. Mommsen. This letter addressed to the Senate of Rome announces the elevation of Cyprian to the post

of *comes sacrarum largitionum*. We know from Anon. Val. 14, 85 that Cyprian had been previously a *referendarius*, and can infer that the eulogy of him in this letter relates to his merits in that capacity. He used to accompany Theodoric on his rides and lay cases before him: tunc nobis causas multiplices relator delectabilis ingerebat eratque eius infastidita suggestio sub iudicis animo taedioso. Ita dum causas praestandi benignus artifex ingerebat, reficiebatur animus beneficiorum aviditate succensus.

From these passages it is evident that the *referendarii* exercised functions in the same sphere as the *magistri scriniorum*, at least as the *mag. mem.* and *mag. libb.*, and perhaps as the *mag. epp.* so far as he was concerned with *preces*. It was their duty to report petitions to the Emperor, to transmit the imperial answers to the officials concerned, to convey unwritten *κελεύσεις* or *mandata* of the Emperor to judges (both in the capital and the provinces), certifying them by a deposition (*κατάθεσις*).

In the Ostrogothic kingdom a *referendarius* might be a confidential adviser of the king, as appears from the case of Cyprian. Under this régime there seem to have been no *magistri scriniorum*. The title *magister scrinii* seems only to have been used as an honorary title conferred on the *comitiacus* (Cass. *Var.* vi, 13), who was the chief of the *agentes in rebus*. It would seem therefore that the duties of the *magistri* must have devolved entirely on the bureau of the quaestor.

On the ground of similarity of functions Mommsen has simply identified the *referendarii* with the *magistri scriniorum* or ἀντιγραφῆς. But there are very serious objections to this conclusion.

I pass over the consideration that it would be odd if the same officials were at one time called ἀντιγραφῆς, at another ῥεφερενδάριοι in the Greek constitutions of the sixth century. But it is very difficult to believe that a *magister* of one of the *scrinia* would have been described as *referendarius* in a law of 427 A.D. (*C. I.* 1, 50, 2): *mandata impp. Theodosii et Valentiniani AA. missa ad Antiochum pp. per referendarium*. Nor is it easy to conceive that it could have devolved on the three or four *magistri* to be themselves the bearers of the imperial decisions to their destinations. This brings us to the fact that the *referendarii* were far more numerous than the *magistri*.

From a Novel of Justinian of 535 A.D. (18 Zach. = 10 vulg.) we learn that in that year there were fourteen *ῥεφερενδάριοι*.<sup>1</sup> The Emperor directs that vacancies are not to be filled up till the number falls to eight. Now the *scrinia* were not increased in number, as we know from a constitution of the same year.<sup>2</sup> It seems therefore, on the face of it, unlikely that the *magistri* had been increased in number.

But we have a clear distinction drawn between the *ἀντιγραφῆς* and the *ῥεφερενδάριοι* in a law of Leo I (473 A.D.). *C. I.* 4, 59, 1: οὐδὲ τὸν κατὰ καιρὸν μεγαλοπρεπέστατον κναίστορα ἢ τοὺς ἄλλους ἄρχοντας τοῦ θείου παλατίου ἢ τοὺς περιβλέπτους ἀντιγραφέας ἢ τὸν περιβλέπτον σεκουνδοκῆριον ἢ τερτιοκῆριον τῶν λαμπροτάτων τριβούνων ἢ τοὺς κατὰ καιρὸν περιβλέπτους *ῥεφερενδαρίους*. Here both these officials are enumerated in a way which precludes their identity.

Further light is thrown on the *referendarii* by a sixth-century text which escaped the notice of Mommsen. This text is preserved in the *De Ceremoniis* of Constantine Porphyrogenetos (i, c. 86, p. 390, ed. Bonn.), and is almost certainly taken from the *Κατάστασις* of Peter the Patrician, the same book from which the two preceding chapters are transcribed. From this document we learn that the *ῥεφερενδάριος* was appointed from among the *tribuni notarii*, by a simple imperial mandate (*ἀπὸ ψιλῶν μανδάτων*), communicated by the Praepositus. Two of the *referendarii* received salaries as such, the others were unpaid in the capacity of *referendarii*, but continued to be *tribuni notarii*,<sup>3</sup> and were paid as such. The Empress Theodora had a (paid) *referendarius*, and after her death Justinian transferred him to his own service.

This important passage supplies further proof that the *referendarii* cannot be identified with the *ἀντιγραφῆς*. The mode of their appointment contrasts with the ceremony observed in the case of the *ἀντιγραφεὺς*, and although this ceremony is known from a passage which relates to the usage of the ninth and tenth centuries (*De Cer.* i, c. 79), it illustrates the different position and different history of the office. The intervention of the Praepositus points to the fact that the *referendarii* were personal servants of the Emperor, in a sense which would not be

<sup>1</sup> *eis tessareskaidēkatōn ὁ τούτων ἀριθμὸς ἐξέβη.*

<sup>2</sup> Nov. 27 Zach. = 35 vulg.

<sup>3</sup> *τριβούνοι νοτάριοι πραιτωριανοὶ πουνκτάριοι.* Cf. Justinian, *Nov.* 38 (= vulg. 13), p. 226: *τῶν λαμπροτάτων τριβούνων πραιτωριανῶν καὶ νοταρίων.*

true of the *magister scriniorum*. The circumstance that Theodora had a *referendarius* of her own confirms this conclusion. Further there is no evidence or probability that any of the *magistri* were at the same time *tribuni notarii*. The close connection of the *referendarii* with the *tribuni notarii* is illustrated by the presence of ὁ περίβλεπτος τριβούνος καὶ ῥεφερενδάριος at the Council of Chalcedon (Mansi, *Conc.* 6, 757, 761, 821). Similarly a *tribunus notarius et ref.* is in attendance at the Fifth General Council at Constantinople (*ib.* 8, 879).

Another point should be noted. The Novel of Justinian (18, cited above) limiting the number of the *referendarii* is addressed to Hermogenes, the Master of Offices. Mommsen mentions the fact as telling in his favor, since the *sacra scrinia* were *sub dispositione magistri officiorum*. But it rather makes against his view. For the Notitia shows that though the *scrinia* were under the Master of Offices, the *magistri* were not. They were not the heads of the *scrinia*; the *scrinia* supplied them with *adiutores*.

The conclusion is that the *referendarii* were quite distinct from the *magistri sacrorum scriniorum* or ἀντιγραφῆς. The latter drafted in legal form the imperial decisions, prepared appeal cases, etc.; especially the *magister memoriae* coöperated with the quaestor in drafting laws. The *referendarii*, who might be described as legal secretaries of the Emperor, were probably employed in communications between the Emperor and the *magistri*, to whom they imparted the Emperor's decisions; they acted as bearers of the unwritten answers of the Emperor, in judicial matters, to the persons concerned; and they might be employed on various special missions.<sup>1</sup> From the nature of the case they might possess much influence on the imperial decisions.

In later times the imperial ῥεφερενδάριοι disappear. When a ῥεφερενδάριος is mentioned in Byzantine documents later than the seventh century, the reference is to the ῥεφερενδάριος of the Patriarch.<sup>2</sup>

<sup>1</sup> Cf. Chron. Pasch. (*sub* 363 A.D., p. 550, ed. Bonn.), where Julian sends a ῥεφ. to St. Dometios. Also Eustathios, *Vita Eutychii*, Migne, *P. G.* lxxxvi (2), 2301.

<sup>2</sup> For instance in Constantine Porph., *De Cer.* i, 44, p. 225 (a document of 768 A.D.); also *ib.* pp. 29, 237, 240, 246. *Vita Euthymii*, ed. De Boor, xx, 6.